

**CALFED FUNDING, ADMINISTRATION AND PROGRAM AGREEMENT**

Preamble

This Agreement is entered into by the California Department of Water Resources (hereinafter "DWR") and the Bureau of Reclamation (hereinafter "USBR"), the Fish and Wildlife Service (hereinafter "USFWS"), the Environmental Protection Agency (hereinafter "EPA"), and the National Marine Fisheries Service (hereinafter "NMFS") of the United States of America, which federal agencies are hereinafter collectively referred to as the United States Federal Ecosystem Directorate (hereinafter "FED"). In this agreement, DWR and FED are referred to collectively as the "parties." DWR is acting on behalf of the California Water Policy Council (hereinafter "Council"). The Council and FED shall be hereinafter referred to collectively as "CALFED." The purpose of this Agreement is to establish the administration, structure and funding for joint management of programs set forth in Exhibit C of the Framework Agreement between Council and FED which is incorporated by reference into this Agreement, a copy of which shall be located in the contract file of the Joint State/Federal Program Team office.

Recitals

1. Exhibit "C" of the Framework Agreement calls for the Council and FED to coordinate and cooperate in the joint management of evaluation of alternative solutions to problems affecting public values in the Bay-Delta Estuary, with a central role for a committee of citizen-advisors. CALFED provides policy

direction and oversight to the long-term solution-finding process, and ensures consistency between program policy and statutory requirements.

2. As part of its joint management of the long-term solution-finding process, CALFED will provide support for the Bay/Delta Advisory Council (hereinafter "BDAC"), a citizen advisory committee chartered under the Federal Advisory Committee Act (hereinafter "FACA"). CALFED will utilize the ongoing Interagency Ecological Program as a source of technical support, and will foster coordination with other State and federal programs focused on the Bay-Delta Estuary.
3. CALFED is responsible for working with the Program Manager position provided for in this Agreement.
4. The Program Manager will be supported by a Joint State/Federal Program Team (hereinafter "Program Team") composed of technical, administrative, and support staff from the participating State and federal agencies. This Agreement covers the administrative and financial support necessary for establishment and maintenance of the Program Manager, Program Team, and BDAC.
5. In order to carry out the goals of this program, it is necessary for the parties to establish cost-sharing principles for the work to be performed, to provide for the hiring of a program manager and for the availability of other program staff, to provide for the ability to contract for services, and to establish general administrative support for program activities. The parties intend that

this Agreement provide the authority and basis for carrying out these activities.

Agreement

The parties agree as follows:

1. Definitions:

- a. "Component action" means an element of this Agreement subject to cost-sharing, and for which costs will be itemized individually.
- b. "Costs" means necessary and reasonable direct and indirect costs incurred, but not necessarily paid, for the implementation of the component actions covered under this Agreement. Direct costs shall include labor and related fringe benefits, materials and supplies, travel, equipment depreciation, and items or services procured directly for carrying out the component actions. Indirect costs shall include the normal and necessary administrative and general costs of activities that are reasonably allocated to performing obligations under this Agreement.
- c. "Fiscal Year" means the period from and including the first day of July of each calendar year through the last day of June of the following calendar year.
- d. "In-kind services" means contributions toward either party's cost-sharing under this Agreement which are in a form other than cash. In-kind services may include

labor charges, provision of office space and meeting facilities, document reproduction, or other contributions that would carry out the purposes of Agreement. Credit shall only be allowed for in-kind labor charges as provided in Section 3e, infra.

e. "Local agency" means any city, county, city and county, district, public authority, public agency, or any other political subdivision, including joint powers agencies, of the State of California.

2. Term: This Agreement shall commence upon the date of approval by the California Department of General Services and shall expire four (4) years thereafter. The parties may renew this Agreement for a term certain by mutual written agreement at the end of the four-year period. Each party may terminate this Agreement upon thirty (30) days written notice to the other party.

3. Cost-Sharing Principles:

a. The costs of carrying out this Agreement shall be shared equally by the parties over the term of this Agreement. The maximum payable by DWR under this Agreement shall not exceed ten million dollars (\$10,000,000.00), which includes the cash valuation of in-kind services. The maximum payable by FED under this Agreement shall not exceed ten million dollars (\$10,000,000.00), which includes the cash valuation of in-kind services.

- b. The parties share a common goal of maximizing the flexibility with which component actions may be carried out pursuant to this Agreement. The parties intend to cooperate in funding the component actions based on appropriations available to them. Nothing in this Agreement is intended to prevent either party from moving forward with implementation of a mutually agreed upon component action where the other party has not obtained an appropriation or other funding for that component action, although cost-sharing credit for such component action may be acquired only as established in this Agreement.
  
- c. The parties will use their best efforts to seek funding for the component actions from whatever sources may be available to them, but recognize that the FED's funding is contingent upon appropriations by Congress, and that DWR's funding is subject to availability of funds through the State's normal budget process or to availability of funding from other sources.
  
- d. By mutual agreement of the parties, one party may fund all, none, or any percentage of the cost of a component action, as long as the total amount expended for this Agreement is shared equally by the parties over the term of this Agreement. The actual contributions by each party, including in-kind services, to the component actions established in this Agreement shall be determined by mutual agreement of the parties.
  
- e. Either party's contribution towards cost-sharing may, by mutual agreement of the parties, include cash

contributions, non-cash donations of goods, equipment or real property, and provision of in-kind services from CALFED, and other State, federal, and local agencies.

- f. Costs incurred under this Agreement will vary from year to year based on the work being performed. The parties recognize that one party may have incurred costs during a year in excess of its proportionate share of the overall contribution required under this Agreement. The parties will review the workplan of Section 4, infra, annually and evaluate the balance between the parties in terms of costs incurred and anticipated obligations. Either party may, in consideration of that balance and in consideration of the funding expected to be available, request that the workplan be modified to adjust the balance between costs incurred and obligations. Notwithstanding that balance, nothing in this article is intended to prevent either party from proceeding with the implementation of a component action.
- g. Component actions identified for administration of this agreement include: support for Program Manager, support for Program Team, support for BDAC, FACA compliance, general administrative support, purchase and maintenance of equipment, use of office space, office remodeling, and individual task orders. Each of these component actions will be included in the budget and accounting provided for in section 4, infra.

- h. It is recognized by the parties that upon termination, or by the performance expiration date, of this Agreement, either party may have been required to spend more than half of the dollar value of total costs expended under this Agreement. In the event that such an imbalance in expenditures occurs at that time, the deficient party shall seek funding and/or consider credits from all appropriate resources to remedy the balance.

4. Workplan and Agreement Administration

- a. Upon execution of this Agreement, the parties will direct the Program Manager to develop a proposed workplan and a proposed budget agreeable to the parties for carrying out the program and present the proposed workplan and budget to CALFED for approval. The workplan and budget will form the basis for identifying the need and timing of workplan elements to be carried out by the Program Team and through task orders under this Agreement. The Program Manager will review and update the workplan and budget at least annually and present said workplan and budget to the parties for approval.
- b. In consultation with CALFED, the Program Manager shall prepare the budget which shall be based upon projected expenditures for the portions of the workplan to be accomplished. At the beginning of each fiscal year, the new budget shall be placed in the contract file located at the Program Team offices.

- c. The parties shall prepare and submit to each other an accounting of their costs actually incurred and/or credited in the previous year and may make any necessary adjustments for underexpenditures or overexpenditures in the budget for the coming year.
- d. Upon expiration of this Agreement, or upon its termination, the parties shall submit to each other a final accounting of all costs incurred, obligated under existing Task Orders or contracts, and/or credited pursuant to the Agreement. Any necessary adjustments for underpayments or overpayments shall be made as soon as practicable thereafter to reflect the obligations established and in effect at the time of expiration or termination.

5. Task Orders

- a. At the request of the Program Manager and in consultation with CALFED as appropriate, the parties may negotiate work to supplement the program team planning efforts through Task Orders for the workplan elements listed in Exhibit B, infra, that have been authorized under the workplan, prepared in accordance with the format described in the Sample Task Order Contents which is attached as Exhibit A and incorporated herein by this reference. At a minimum, each Task Order shall contain a description of the services to be performed, a schedule for completing the work, a list of deliverables, the staff to be assigned to the work, cost schedule and maximum payable, payment

schedule, invoicing procedure, term, and a termination provision.

- b. Task Orders for workplan elements shall be prepared by the Program Manager and signed by the Agreement administrators, their designees, or the Program Manager, as appropriate, prior to commencement of the described task. Workplan elements subject to Task Orders may include the items listed on the attached Exhibit B which is incorporated herein by this reference.

6. Program Manager:

- a. The parties shall hire a Program Manager, who will be responsible to the CALFED and who shall be directly responsible for planning, managing, directing, and coordinating the development and implementation of long-term solutions to problems affecting public values in the Bay-Delta Estuary.
- b. Specific duties of the Program Manager shall include, but not be limited to, the following:
  - (1) Manage the program activities of the Joint State/Federal Program Team, direct the daily activities of the program team, and supervise all personnel assigned. The Program Manager shall be responsible for verifying the attendance of all personnel assigned and shall initial appropriate timekeeping documents and submit them to the employee's headquarters supervisor for final

review and approval. Performance appraisals shall be completed by the Program Manager who shall submit copies to the employing agency's headquarters Personnel Office.

- (2) Serve as liaison between the Program Team and CALFED.
- (3) Direct preparation of all appropriate California Environmental Quality Act (CEQA)/National Environmental Policy Act (NEPA) documentation for the lead agencies.
- (4) Serve as the liaison with the Interagency Ecological Program in securing appropriate technical support for the Program Team.
- (5) Serve as the primary point of contact under the CEQA/NEPA for public input and overall program comments.
- (6) Direct the full range of program activities, including the development of periodic work plans, budget, staffing requirements, technical reports and public involvement, provision of briefings, preparation of responses to and coordination with Congressional and State legislative staff.
- (7) Upon request, and in coordination with CALFED, provide information to BDAC.

- (8) Work with the BDAC chairperson to achieve timely recommendations from BDAC.
- (9) Assure ongoing and effective coordination with other processes or programs relevant to the charge of the long-term solution process. This includes, but is not limited to, the Central Valley Project Improvement Act (CVPIA) and the Comprehensive Conservation and Management Plan (CCMP) for the San Francisco Estuary Project.

7. Joint State/Federal Program Team: The Program Team shall include staff from State and federal agencies with expertise in the issues and needs to be addressed by the program, including, but not limited to, water supply, biological resources, water quality, levees and channels, CEQA/NEPA, administration, and budget. The Program Team shall report to the Program Manager. The Program Team's duties include, but are not limited to, the following:

- a. Under the direction of the Program Manager, the Program Team shall develop the joint EIR/EIS which shall incorporate full and coordinated compliance with CEQA/NEPA and all other applicable State and federal laws, and which shall ensure maximum opportunities for public involvement.
- b. The Program Team shall provide maximum opportunities for other public involvement through such activities which include, but are not limited to, workshops and distribution of informational mailers.

- c. The Joint State/Federal Program Team shall include among its staff an Administrative Officer who is a State employee and whose duties consist of preparing budget and program control documents, assisting the Program Team in the preparation of and tracking of contracts and interagency agreements, processing all purchasing requests for materials and supplies and building services, and advising and assisting the Program Manager on personnel issues.
8. Employment and Supervision of Program Manager and Program Team:
- a. In accordance with the Intergovernmental Personnel Act, (IPA), 5 U.S.C. sections 3371-3376, USBR has employed the Program Manager. By letter, DWR or USBR shall agree as to whether DWR or USBR shall employ the individual members of the Program Team. The parties shall agree to the Program Team composition and resulting appointments.
  - b. CALFED shall provide programmatic oversight for, and USBR shall administratively supervise, the Program Manager. The Program Manager shall manage the program activities of the Joint State/Federal Program Team and supervise all personnel assigned.
  - c. The employing party shall pay the costs of the salaries and benefits of its own staff who are employed as the Program Manager and the Program Team. These costs shall be subject to the cost-sharing provisions in Section 3, supra. For State employees, such costs

shall be computed in accordance with the State of California Departments of Water Resources' and Fish and Game's "Pay Scales-May 1994" or subsequent versions of those publications which are in effect at the time such costs are incurred. For Federal employees, such costs shall be computed in accordance with 5 U.S.C., Chapter 53.

- d. Should either party become dissatisfied with the performance of the Program Manager, that party will notify the other party of its dissatisfaction. The employing agency shall convene a meeting of CALFED whom shall evaluate at that meeting whether the Program Manager should be retained. CALFED shall render a decision and that decision shall be final. If CALFED decides that the Program Manager should not be retained, then: (i) if the Program Manager is a State employee, DWR shall terminate that person's employment or transfer him/her to a new position in State government in accordance with State laws and regulations; or (ii) if the Program Manager is on IPA loan from a State or local agency or is a federal employee, then, as appropriate, the IPA loan shall be terminated or the federal employee shall return to a position in a federal agency in accordance with federal laws and regulations. If the Program Manager is so terminated, then the parties may solicit applications for the Program Manager position and agree, by letter, which party shall employ a new Program Manager.

9. BDAC

- a. BDAC will be chartered under the Federal Advisory Committee Act (FACA) and be composed of State, Federal, and such other public members as mutually agreed by the Governor and the Secretary of the Interior.
- b. The parties shall share the costs incurred by BDAC as direct charges in accordance with the approved workplan and budget. These costs shall include, but not be limited to, the following expenses: travel and per diem, reproduction and mailing, court reporter services, and site rental.
- c. **Federal Advisory Committee Act Compliance:**
  - (1) USBR shall ensure compliance with all administrative requirements of FACA, including compliance with the provisions of the BDAC charter.
  - (2) The maximum payable for any costs associated with FACA compliance shall not exceed \$250,000 per year. These costs shall be shared by the parties.
  - (3) Travel and per diem costs of the members of BDAC, which shall be part of the \$250,000 limit provided by 9.c.(2), above, shall be paid by USBR in accordance with the requirements of FACA.

10. Administrative Support and Overhead:

- a. DWR shall be responsible for providing all administrative and fiscal services, information systems including, but not limited to, maintenance of and training for the use of such systems, and personnel support for the Program Team. DWR shall also be responsible for travel and per diem expenses for the State members of the Program Team, and, if appropriate, by implementing agreement, for the federal members of the Program Team. Except as provided in section 9c(3), supra, DWR shall also provide administrative, fiscal and program support, including but not limited to, meeting space, court reporter, and reproduction services for BDAC. These costs shall be charged as direct costs and shared by the parties.
  
- b. DWR shall assess an administrative fee on the salaries and benefits of the Federal participants on the Program Team as reimbursement for administrative support of those Federal participants and will receive credit for its cost share under this Agreement. The fee will be equal to the overhead rate for salaries and benefits of State participants on the Program Team. Overhead for salaries and benefits of State participants on the Program Team will be computed at the approved State Agency Indirect Cost Negotiation Agreement rate, with the exception that the Averaged Line Management component of the rate shall not be charged. This overhead rate may be revised by such modifications of the Negotiation Agreement as may be made through the periodic renegotiation of the Indirect Cost Agreement

between the Department of the Interior and DWR. The fee thus computed will be deemed sufficient to cover general management expenses, prorated operating expenses including, but not limited to, utilities, communications, supplies, auto expenses, and controller accounting, and the statewide cost allocation plan for the federal members of the Program Team.

- c. DWR shall provide all office space needed for the Program Manager and the Program Team in accordance with the office space standards and rates set forth in the State Administrative Manual and authorized by the California Department of General Services. The monthly rental rate includes office space and janitorial and maintenance services.
  - d. Office modules and furniture for the Resources Building have been installed by DWR at no cost to the FED. However, any office space remodeling or furniture renovations or upgrades beyond the initial stock supplied by DWR, or furniture rental, must be approved by DWR and USBR and shall be cost-shared by the parties.
  - e. At the expiration of this Agreement, any items purchased under sections c and d, supra, shall become the property of the State.
11. Personal Property Acquisition, Maintenance and Disposition:  
As authorized by the workplan, either party may acquire personal property, including, but not limited to, electronic data processing equipment, and reproduction equipment in

furtherance of this Agreement. Unless otherwise agreed to by the parties, the party acquiring such personal property shall be responsible for its maintenance and shall retain title to the property upon termination of this Agreement. The party incurring purchase and maintenance costs shall receive cost-share credit for its actual costs plus overhead pursuant to Section 3, supra, for purchase costs, maintenance costs, repair and replacement costs, and hardware and software support upgrades.

12. Contracts:

- a. Either party or both parties to this Agreement may enter into any contracts recommended by the Program Manager and approved by ACT to implement the goals set forth in Exhibit "C" of the Framework Agreement.
- b. **Conflict of Interest:** During the term of this Agreement, each party agrees that all contracts entered into for the furtherance of this Agreement shall contain the appropriate contract language necessary to satisfy both State and federal laws, rules, and regulations pertaining to conflict of interest.

13. Management and Administration of Agreement: This Agreement shall be administered by the Director of DWR or his designee, and by the Regional Director, Mid-Pacific Region, USBR or his designee. All notices and invoices pertaining to this Agreement shall be sent to:

Director  
Department of Water Resources  
Post Office Box 942836  
Sacramento, California 94236-0001

USBR  
Regional Director  
2800 Cottage Way  
Sacramento, California 95825

14. Dispute Resolution: In the event of a dispute arising out of any term or condition of this Agreement, the parties shall meet as soon as possible to resolve the dispute. The parties shall then attempt to negotiate a resolution of such dispute. Notwithstanding the above provision, neither party waives any rights or duties it may have pursuant to federal and State laws, rules, or regulations.
15. Records and Audits: Subject to applicable laws and regulations, both parties shall have full access to the books and records of the other party as they pertain to this Agreement, with the right to make copies thereof. Unless otherwise provided by federal laws, rules, or regulations, the parties shall be subject to the examination and audit of the California State Auditor for a period of three years after final payment under the Agreement.
16. Integration Clause and Amendments:
  - a. This Agreement incorporates the entire understanding between the parties. No oral understanding or agreement not incorporated herein shall be binding on any of the parties.

b. Amendments to this Agreement shall not be valid unless made in writing, signed by the parties, and approved by the California Department of General Services.

17. Standard Clauses: The provisions of the attached Exhibit C are hereby incorporated into this Agreement by this reference.

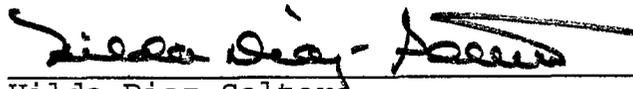
18. Signature Clause: In witness whereof, the parties hereto have executed this Agreement on this \_\_\_\_\_ day of \_\_\_\_\_, 1995.

  
 David N. Kennedy  
 Director  
 Department of Water Resources

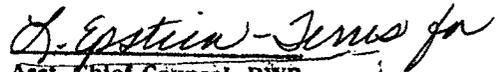
  
 Roger Patterson  
 Regional Director  
 U.S. Bureau of Reclamation

  
 Wayne White  
 State Supervisor  
 U.S. Fish & Wildlife Service

  
 Felicia Marcus  
 Regional Administrator  
 Environmental Protection Agency

  
 Hilda Diaz-Soltero  
 Regional Director  
 National Marine Fisheries Service

Approved as to legal form and sufficiency:

  
 J. Epstein-Jervis for

Disbursement from WRRF SOC WC 135 Fund Item \_\_\_\_\_ Ch. \_\_\_\_\_  
 Reimbursement from \_\_\_\_\_ Fund Item \_\_\_\_\_ Ch. \_\_\_\_\_ Code \_\_\_\_\_

F.Y.	ACCOUNT NO.	ORGAN. NO.	EXP. CODE	BUDGET ITEM NO.	ENCUMBRANCE AMOUNT	UNENC. BAL.	
95	1467 1000	0100	231		\$100,000	8,123,570.31	995
96	1467 1000	0100	231		100,000	Future years pending	
97	1467 1000	0100	231		100,000	budget approval.	
98	1467 1000	0100	231		100,000		
99	1467 1000	0100	231		100,000		

I Hereby Certify upon my own personal knowledge that the unencumbered balance of the departmental budget provision for the period stated above is correct.  
 (After T.B.A. No. \_\_\_\_\_ or B.R. No. \_\_\_\_\_)

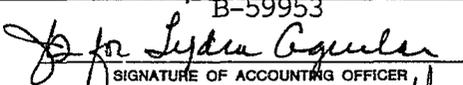
  
 SIGNATURE OF ACCOUNTING OFFICER  
 STATE OF CALIFORNIA  
 THE RESOURCES AGENCY  
 DATE 4/18/95

Exhibit A

SAMPLE

TASK ORDER CONTENTS

1. Description of scope of work to be undertaken
2. Identification of agency(ies) or entity(ies) performing the work, and specific roles and responsibilities of CALFED member agencies, if applicable
3. Term
4. Deliverables to be provided, if any
5. Schedule for performing the task
6. Schedule for coordination meetings, if applicable
7. Schedule and process for review and approval of work at key milestones, if applicable
8. Schedule for status reports and fiscal reports, if applicable
9. Staff assigned and estimated hours
10. Cost Schedule -- labor rates plus overhead breakdown
11. Maximum payable for task
12. Schedule of payments and invoicing procedures
13. Special funding arrangements including cost-sharing, if applicable
14. Valuation of in-kind services
15. Contact persons for each party
16. Termination clause

Signed: \_\_\_\_\_ (DWR) \_\_\_\_\_ (USBR)

Date: \_\_\_\_\_

**TASK ORDER ITEMS OF WORK**

1. **Resource Planning and Engineering:** Refine preliminary solution actions, perform preliminary analysis, and prepare preliminary cost estimates. Refine preliminary evaluation criteria and screen the solution actions by the criteria for all resource areas. Perform various preliminary engineering tasks including, but not limited to, seismic risk, levee inventory, monitoring for sedimentation and scour, and design of facilities.
  
2. **Alternatives Analysis:** Formulate an initial range of alternatives consisting of combinations of solution actions. Screen alternatives for fatal flaws. Analyze and refine the alternatives. Prepare information necessary to screen alternatives to a manageable number that can be further analyzed in an EIR/EIS.
  
3. **Resources Inventory:** Catalog existing information on resources of the Bay-Delta, and determine additional resource inventory needs. Carry out needed Bay-Delta resource inventory work, which may include habitat, vegetation, and endangered species inventories, habitat evaluation, wetland delineation, archaeological and

historical inventories, fisheries studies, and inventories of soils, geology, and farmland types.

4. **Resource Modeling:** Identify and evaluate resource models available for use in the process. Analyze criticisms and concerns regarding existing models and prepare recommendations on models for use. Develop new models or modify models as necessary to provide a full range of analytical tools.
5. **Environmental Compliance:** Identify State and federal lead, permit, and review agencies. Conduct endangered species consultations with State and federal agencies. Prepare notices and environmental documents leading to preparation of EIR/EIS.
6. **Economic and Financial Analysis:** Assess the applicability of existing economic tools to Delta solutions, and recommend tools for use in the process. Modify economic tools as necessary. Prepare Delta economic inventory and economic and financial studies of alternatives.
7. **Process Management, Decision Analysis, and Solution Finding Facilitation:** Design the solution finding process and facilitate meetings conducted as part of this process. Develop and implement decision analysis tools to assist the

Program Team in analyzing the impacts and benefits of alternatives. Provide support for the use of the Decision Analysis tools in the Public Outreach program.

8. **Real Property Use and Appraisal Studies:** Estimate land needs for various options and alternatives. Prepare preliminary cost assessment for use in developing cost estimates of options and alternatives.
  
9. **Water Quality and Water Pollution Control Studies:** Analyze the potential nature and magnitude of water quality impacts and public health issues of various options and alternatives. Make recommendations with respect to water quality considerations.
  
10. **Water Needs Assessment and Analysis:** Analyze and critique existing information on water needs, including areas upstream of the Delta and in export service areas. Recommend and implement appropriate tools and approaches. Prepare analysis of water needs in relation to changing water demands and price structures.
  
11. **Public Involvement:** Keep the public and stakeholder groups informed of the process through workshops, scoping sessions, and other means. Solicit public input to the process. Assist the Program Team in conducting EIR/EIS scoping

meetings and workshops. Prepare scoping reports and other documents.

12. Legal Constraints Analysis and Institutional Design

Capability: Analyze legal constraints to proposed options, including water rights laws. Develop possible institutional approaches to water management in areas such as groundwater management, Delta standards and guarantees, environmental water purchases, water transfers, and coordinated project operation.

13. Geographic Information Systems (GIS): Identify GIS

information that will be needed in the process. Inventory information available from various sources. Implement a GIS which provides the information required for the Environmental Documentation for Bay/Delta Solution. Format and present data for use. Provide advice on data collection methods and formats to facilitate GIS use of data.

14. Environmental Documentation: Prepare a draft EIR/EIS

including related engineering feasibility studies, operations studies, general impact studies, mitigation studies and plans, design studies and all other studies necessary to complete the EIR/EIS. Respond to agency and public comments on the draft, and prepare a final EIR/EIS.

**STANDARD CLAUSES**

1. FED, and the agents and employees of FED, in the performance of this Agreement, shall act in an independent capacity and not as officers, employees or agents of DWR. DWR, and agents and employees of DWR, in the performance of this Agreement, shall also act in an independent capacity and not as officers, employees or agents of the FED.
  
2. Without the written consent of the other party, this Agreement is not assignable by either party either in whole or in part.
  
3. Time is of the essence in this Agreement.
  
4. FED affirms that it is aware of the provisions of Section 3700 of the California Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that Code, and to the extent required by federal law, FED affirms that it will comply with such provisions before commencing the performance of the work under this Agreement.

5. During the performance of this Agreement, DWR and FED and their subcontractors shall not deny the Agreement's benefits to any person on the basis of religion, color, ethnic group identification, sex, age, physical or mental disability; nor shall they discriminate unlawfully against any employee or applicant for employment because of race, religion, color, national origin, ancestry, physical handicap, mental disability, medical condition, marital status, age (over 40), or sex. DWR and FED shall ensure that evaluation and treatment of employees and applicants for employment are free of such discrimination. To the extent required by federal laws, rules or regulations, DWR and FED shall comply with the provisions of the Fair Employment and Housing Act (Government Code Section 12900 et seq.), the regulations promulgated thereunder (California Code of Regulations, Title 2, Sections 7285.0 et seq.), the provisions of Article 9.5, Chapter 1, Part 1, Division 3, Title 2 of the Government Code (Government Code Sections 11135-11139.5), and the regulations or standards adopted by the DWR to implement such article.
  
6. If applicable, travel and per diem expenses to be reimbursed by DWR under this Agreement shall not exceed the same rates DWR provides for unrepresented employees in accordance with the provisions of Title 2, Chapter 3, of the California Code of Regulations.

7. Nothing in this Agreement is intended to define, determine, limit, or affect the rights of third parties.
8. The waiver of a breach of any of the provisions of this Agreement shall not be deemed to be a waiver of any other provisions hereof, or of a subsequent breach of such provisions.
9. Officials Not to Benefit:
  - (a) No member of or delegate to Congress or Resident Commissioner shall be admitted to any share or part of this Agreement or to any benefit that may arise herefrom. This restriction shall not be construed to extend to this Agreement if made with a corporation for its general benefit.
  - (b) No representative of DWR shall receive any benefit that may arise by reason of this Agreement other than that as a representative of DWR and in the same manner as other representatives of DWR.
10. Where the terms of this Agreement provide for action to be based upon the opinion, judgment, approval, review, or determination of the parties, such terms are not intended to be and shall not be construed as permitting such opinion,

judgment, approval, review, or determination to be arbitrary, capricious, or unreasonable.

11. This Agreement and all of its provisions shall apply to and bind the successors and assigns of the parties hereto.

fapa